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ZOHO CORPORATION PVT. LTD.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ZOHO CORPORATION PVT. LTD.

Plaintiff,

v.

HUBSPOT, INC.,

Defendant.

Case Number: 3:20-cv-1573

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

**DEMAND FOR JURY TRIAL**

Plaintiff Zoho Corporation Pvt. Ltd. (“Zoho” or “Plaintiff”) for its Complaint against Defendant Hubspot, Inc. (“Hubspot” or “Defendant”) alleges as follows:

**PARTIES**

1. Plaintiff Zoho is a corporation duly organized and existing under the laws of the country of India, with a principal place of business at Estancia IT Park, Plot No. 140 & 151, GST Road, Vallancherry Village, Chengalpattu Taluk, Kanchipuram District 603 202, India, and is the parent of Zoho Corporation, a wholly owned subsidiary corporation duly organized and

1 existing under the laws of the State of California, having its principal place of business at 4141  
2 Hacienda Drive, Pleasanton, California 94588.

3 2. On information and belief, Defendant Hubspot is a corporation duly organized  
4 and existing under the laws of the state of Delaware, with a place of business at 25 First Street,  
5 Cambridge, Massachusetts 02141.

### 6 **JURISDICTION AND VENUE**

7 3. This is an action seeking a declaratory judgment that Zoho has not infringed any  
8 of Hubspot's trademark rights and has not engaged in unfair competition. This Court has subject  
9 matter jurisdiction under 28 U.S.C. §§ 2201(a), 2202 (Federal Declaratory Judgments Act), 28  
10 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a) (trademarks), and 15 U.S.C. § 1121  
11 (Lanham Act), and has supplemental jurisdiction under 28 U.S.C. § 1367.

12 4. This Court has personal jurisdiction over Defendant Hubspot because it conducts  
13 business in the State of California and within this district, including the advertising and sale of  
14 its products over the Internet to customers in California, and has contracts with business  
15 customers and partners resident in California. In addition, Defendant has sent two cease and  
16 desist letters to Zoho, one to Zoho in India and one to Zoho's attorneys in this district. One of  
17 the letters asserts that Hubspot's trademarks are "well-known and famous" and that Hubspot has  
18 "made a substantial investment in marketing, advertising and promoting the identification of its  
19 trademarks to its customers and the online community." These assertions necessarily mean that  
20 Defendant has conducted widespread and systematic advertising and business activities in this  
21 district.

22 5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a  
23 substantial portion of the activities giving rise to the claim occurred in this district.

### 24 **INTRADISTRICT ASSIGNMENT**

25 6. This is an action involving intellectual property rights and pursuant to Civil Local  
26 Rule 3-2(c) is to be assigned on a district-wide basis.

**GENERAL ALLEGATIONS****Zoho and Zoho's Trademarks**

7. Zoho provides a comprehensive suite of software to run an entire business and to solve business problems. Zoho has more than 50 million users worldwide.

8. The term "Zoho" is a coined and fanciful word that has no meaning in the English language other than as an identifier of the source of goods and services. Zoho owns twelve registered trademarks that comprise either the singular term "Zoho" or the term "Zoho" followed by another word. In addition, Zoho has another nine pending applications for trademarks that comprise the term "Zoho" followed by another word.

9. Plaintiff's "Zoho" marks are strong and distinctive and have developed significant goodwill and secondary meaning among consumers as identifying Zoho as the source of Zoho's goods and services.

10. This action involves Zoho's use of the trademark "ZOHO MARKETINGHUB," for which Zoho has a pending application (Serial No. 88/092,743). Zoho uses the "Zoho MarketingHub" trademark in connection with "providing on-line non-downloadable software" in International Class ("IC") 42, as described more fully in the application.

11. The trademark Examining Attorney for Zoho's application for "ZOHO MARKETINGHUB" considered the term "MARKETINGHUB" to be descriptive of the described services and required that Zoho disclaim any rights in that term apart from the mark as shown in the application.

12. Zoho's application for "ZOHO MARKETINGHUB" is currently in a suspended status pending the resolution of Defendant's pending application for the trademark "MARKETING HUB" (Serial No. 88/037,120), which is also currently in a suspended status and which is addressed more fully below.

**Hubspot and Hubspot's Trademarks**

13. On information and belief, Defendant Hubspot provides on-line software products for inbound marketing and sales, and is the owner of a number of trademark

1 registrations, several of which comprise or include the term “Hubspot.” Defendant also has  
2 several pending applications for trademarks that include the term “Hub” preceded by various  
3 descriptive terms. On information and belief, the term “Hub” is descriptive, and Defendant has,  
4 in connection with at least one of those applications, disclaimed any rights in that term apart  
5 from the mark as shown in the application, thereby admitting that the term “Hub” is descriptive  
6 of the described services.

7 14. Defendant is also the owner of the registered trademark “HUBSPOT  
8 MARKETING HUB” (Registration No. 5,856,678). On information and belief, the Examining  
9 Attorney for Hubspot’s application for “HUBSPOT MARKETING HUB” also considered the  
10 term “MARKETING HUB” to be merely descriptive of the described services and required that  
11 Hubspot disclaim any rights in that term apart from the mark as shown in the application.  
12 Hubspot did in fact disclaim that term in its application for “HUBSPOT MARKETING HUB,”  
13 thereby admitting that the term “MARKEING HUB” was descriptive of the described services.

14 15. As noted above, Defendant also has a pending application for the term  
15 “MARKETING HUB” (Serial No. 88/037,120). Defendant’s initial application identified goods  
16 and services in IC 42 (“non-downloadable ... software”) and in IC 35 (“Marketing consulting”).

17 16. The application was rejected with respect to the IC 42 services, *inter alia*, because  
18 the trademark examiner considered the term “Marketing Hub” to be merely descriptive of the  
19 “non-downloadable software” services in IC 42.

20 17. The application was also rejected with respect to the IC 42 services because the  
21 examiner determined that there was a likelihood of confusion over similar previously-registered  
22 marks (“MYMARKETING HUB”, U.S. Registration No. 4,311,428, “CROSSCHANNEL  
23 MARKETING HUB”, U.S. Registration No. 4,486,485, and “MARKETING HUB  
24 EXCHANGE”, U.S. Registration No. 5,383,251.)

25 18. In response to these rejections, Defendant deleted the IC 42 “non-downloadable  
26 software” services from the application.



24. On February 13, 2019, more than a year after Zoho's letter, Defendant sent another cease and desist letter that made the same sort of generalized claims as were made in Defendant's previous letter. The new letter asserted that Zoho's use of MarketingHub or Marketing Hub constituted "trademark infringement, unfair competition, and dilution of Hubspot's trademark rights," and referred broadly to "Hubspot's trademarks," the "Hubspot brand" and the "Hub brand." The letter notified Zoho that Hubspot had registered the trademark "HUBSPOT MARKETING HUB" and that Hubspot was seeking registration of "MARKETING HUB," but did not disclose the rejections that had been made of the "MARKETING HUB" application. In fact, it characterized registration of the "MARKETING HUB" trademark as "certain." The letter did not respond to any of the points made by Zoho in its letter to Hubspot, did not explain why Hubspot delayed for over a year before responding, and again threatened litigation. The letter demanded that Zoho immediately stop using the terms MarketingHub, Marketing Hub, or Hub in any manner, that Zoho expressly abandon its application for "Zoho MarketingHub," and that Zoho reimburse Defendant for "the costs it has incurred in investigating and responding to Zoho's infringement, including attorneys' fees." The letter gave Zoho one week to respond. A copy of Defendant's February 13, 2020 letter is attached hereto as Exhibit C.

#### **Non-infringement – There is No Likelihood of Confusion**

25. There is no likelihood of confusion arising out of Zoho's use of the "ZOHO MARKETINGHUB" mark for at least the reasons set forth below.

26. When assessing the likelihood of confusion between compound word marks, it is appropriate to consider whether a portion of a mark is dominant in creating the mark's commercial impression. The dominant portion of Zoho's mark is clearly the term "ZOHO." That term is a coined and fanciful term that has no meaning in English other than as a mark. It has been used for over fifteen years for products and services having over fifty million users, and thus dominates over the descriptive "MARKETINGHUB" portion of the mark.

1           27.     The “ZOHO” portion of the mark is also dominant in part because it comes first.  
2     The first part of a compound mark is often the portion that is likely to be impressed upon the  
3     mind of a customer and remembered.

4           28.     The fact that the “ZOHO” portion of the mark is dominant is reinforced by the  
5     fact that Zoho’s mark is part of a family of marks that begin with or consist of the term “ZOHO,”  
6     further strengthening the distinctiveness and secondary meaning associated with the mark.

7           29.     The likelihood of confusion with respect to compound marks is reduced if the  
8     portion of the marks that is substantially common to both marks is weak. Here, the substantially  
9     common portions are “MARKETING HUB” and “MARKETINGHUB.” Those terms are merely  
10    descriptive for the non-downloadable software services described in the Zoho application for  
11    ZOHO MARKETINGHUB and in the Hubspot application for MARKETING HUB, as noted  
12    by the Examining Attorney for each application. Therefore, those terms are weak and are not  
13    likely to be perceived by customers as distinguishing the source of goods or services.

14          30.     For the same reason, a descriptive mark that has acquired no secondary meaning,  
15    such as Defendant’s “MARKETING HUB,” is entitled to little or no trademark protection.

16          31.     The weakness of Defendant’s “MARKETING HUB” mark is also shown by the  
17    number of similar marks in use for similar services. In addition to the registered marks identified  
18    in paragraph 17 above that include the term “MARKETING HUB,” there are numerous marks  
19    used by third parties that include the same or a similar term. For example, Salesforce promotes  
20    “The Marketing Hub by Salesforce”, which offers services that are very similar to those of  
21    Defendant’s purported mark for “MARKETING HUB”.<sup>1</sup> Similarly, the “Best Digital Marketing  
22    Hub” offers “SEO”, “Advertising”, “Social Media”, “Web Design”, “Local Marketing” and  
23    “Email Marketing”.<sup>2</sup> “Influencer Marketing Hub” offers similar services geared toward using  
24    influencers for marketing.<sup>3</sup> Optimove claims to offer “The Science-First Relationship Marketing  
25    Hub”, but it’s services appear similar to those of Defendant’s purported mark for “MARKETING  
26

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27    <sup>1</sup> <https://www.salesforce.com/hub/marketing/>.

28    <sup>2</sup> <https://www.bestdigitalmarketinghub.com/>.

<sup>3</sup> <https://influencermarketinghub.com/>.

HUB”.<sup>4</sup> For similar services, SAP offers “The Marketing Data Hub 4CE”<sup>5</sup>, Mitel offers a “Partner Marketing Hub”<sup>6</sup>, Intuit offers an “Intuit Marketing Hub”<sup>7</sup>, Sage offers a “Sage Worldwide Partner Marketing Hub”<sup>8</sup>, RRD offers a “Marketing Hub”<sup>9</sup>, Enphase offers the “Enphase Marketing Hub”<sup>10</sup>, Microsoft offers a “Global marketing hub”<sup>11</sup>, Google offers a “Partner Marketing Hub”<sup>12</sup> and Smart Insights offers a “Content Marketing Hub”<sup>13</sup>. The number of similar marks used by third parties for similar services underscores the weakness of the descriptive term “MARKETING HUB” and demonstrates that it is highly unlikely that confusion would arise from use by Zoho of the “ZOHO MARKETINGHUB” mark because consumers would not rely on the descriptive “MARKETINGHUB” portion of the mark to designate source.

32. Gartner, Inc., the leading business research and advisory company, even has a category for the “Multichannel Marketing Hubs Market,” further evincing the descriptiveness of the term “Marketing Hub” for services such as “technology that orchestrates a company's communications with and offers to customer segments across multiple channels. These include websites, mobile, social, direct mail call centers, paid media and email. MMH capabilities also may extend to integrating marketing offers/leads with sales for execution in both B2B and B2C environments.”<sup>14</sup>

33. Differences in the services for which the respective marks are used can also reduce the likelihood of confusion, and when the common portion of the respective marks is weak, as is the case with “MARKETINGHUB” and “MARKETING HUB,” even small differences in the services can be significant. Zoho’s application shows use of the “ZOHO

<sup>4</sup> <https://www.optimove.com/>.

<sup>5</sup> <https://www.sapappcenter.com/apps/7011#!overview>.

<sup>6</sup> <https://www.mitel.com/partners/partner-marketing-hub>.

<sup>7</sup> <https://quickbooks.intuit.com/accountants/resources/marketing-hub/>.

<sup>8</sup> <https://www.sage.com/en-gb/partners/marketing-hub/>.

<sup>9</sup> <https://www.rrd.com/services/marketing/marketing-hub>.

<sup>10</sup> <https://go.enphase.com/intro-to-enphase-marketing-hub-05-17>.

<sup>11</sup> <https://lookbook.microsoft.com/details/abef115b-e40e-469d-9bc0-e91a7bddca19>.

<sup>12</sup> <https://partnermarketinghub.withgoogle.com/>.

<sup>13</sup> <https://www.smartinsights.com/content-management/content-marketing-strategy/a-content-marketing-and-inbound-marketing-blueprint/>.

<sup>14</sup> <https://www.gartner.com/reviews/market/multichannel-marketing-hubs>.

1 MARKETINGHUB” mark for “non-downloadable software” services in IC 42. Defendant has  
2 deleted “non-downloadable software” services in IC 42 from its application for “MARKETING  
3 HUB” and seeks registration of that mark only for “marketing consulting” services in IC 35.  
4 While there are some similarities in the text description of the respective services, there is no  
5 question that software is different from consulting, thus reducing the likelihood of confusion  
6 from use of the respective marks.

7 34. By their nature, the software services of Zoho’s application and the consulting  
8 services of Defendant’s application are both provided to businesses, and therefore the buyers of  
9 the respective services are sophisticated, non-impulse buyers. This sophistication of the buyers  
10 makes confusion unlikely.

11 35. Zoho’s services and use of its mark are shown on Zoho’s website,  
12 [www.zoho.com](http://www.zoho.com), whereas Defendant’s services and use of “MARKETING HUB” are shown on  
13 Defendant’s website, [www.hubspot.com](http://www.hubspot.com), and customers must navigate to each company’s  
14 website to purchase the respective services. Purchasers would not be confused that they are  
15 buying from Hubspot when navigating on Zoho’s website, nor confused that they are buying  
16 from Zoho when navigating on Hubspot’s website. On the other hand, if a consumer performed  
17 a general Internet search for the term “Marketing Hub,” that consumer would encounter the  
18 numerous examples of services described by use of that term shown in paragraph 32 above, as  
19 well as Zoho’s and Hubspot’s services. Even unsophisticated consumers, let alone the business  
20 consumers at issue here, would understand that each of those “Marketing Hub” services are being  
21 offered at a different website, which is run by a different company. This factor also makes  
22 confusion unlikely.

23 36. For at least the above reasons, there is no likelihood of confusion arising from  
24 Zoho’s use of the “ZOHO MARKETINGHUB” mark and therefore even if Defendant had  
25 trademark rights in the alleged “MARKETING HUB” mark, which it does not, Zoho does not  
26 infringe that mark.

37. For at least the above reasons, there is even less likelihood of confusion with respect to Defendant's "HUBSPOT MARKETING HUB" mark arising from Zoho's use of the "ZOHO MARKETING HUB" mark because Defendant's mark includes the distinguishing "HUBSPOT" house name, which is undoubtedly the dominant portion of the compound mark. Therefore, Zoho's use of the "ZOHO MARKETINGHUB" mark does not infringe Defendant's trademark rights in the "HUBSPOT MARKETING HUB" mark.

38. For at least the above reasons, there is no likelihood of confusion arising from Zoho's use of the "ZOHO MARKETINGHUB" mark with respect to any other Hubspot trademark, and Zoho does not infringe any other Hubspot mark.

**Defendant's Trademark Dilution Claim has No Merit**

39. In addition to the reasons set forth above, Defendant's claim for trademark dilution has no merit at least for the reason that Defendant cannot show that its trademarks are famous within the meaning of the trademark dilution laws.

40. Zoho denies that it is liable for trademark dilution.

**Defendant's Unfair Competition Claim has No Merit**

41. Defendant has not identified any basis for an unfair competition claim under either federal or state law other than its assertions that Zoho has infringed Defendant's trademark rights. For at least the same reasons that Zoho has not infringed Defendant's trademark rights, Defendant's claim for unfair competition has no merit.

42. Zoho denies that it is liable for unfair competition under either federal or state law.

**COUNT ONE**

**Declaration of No Trademark Infringement**

43. Zoho incorporates by reference the allegations of paragraphs 1 through 42 as though fully set forth in this paragraph.





1 competition and that Zoho is not liable to Defendant for unfair competition under federal or state  
2 unfair competition law.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff Zoho respectfully requests that the Court grant the following  
5 relief:

6 A. A judgment of this Court declaring that:

7 (a) Zoho's registration and use of the "ZOHO MARKETINGHUB"  
8 trademark is not likely to cause confusion with respect to Defendant's  
9 trademarks, and

10 (b) Zoho is not infringing and has not infringed any of Defendant's trademark  
11 rights under federal or state trademark law.

12 B. A judgment of this Court declaring that:

13 (a) Defendant's trademarks are not famous within the meaning of the  
14 trademark dilution laws, and

15 (b) Zoho's registration and use of the "ZOHO MARKETINGHUB"  
16 trademark is not likely to dilute any of Defendant's trademarks under  
17 federal or state trademark law.

18 C. A judgment of this Court declaring that Zoho's registration and use of the "ZOHO  
19 MARKETINGHUB" trademark does not constitute unfair competition and that  
20 Zoho is not liable to Defendant for unfair competition under federal or state unfair  
21 competition law.

22 D. For Zoho's attorneys' fees and costs incurred; and

23 E. For such further relief as the Court deems just and equitable.  
24

25 Dated: March 3, 2020

SILICON EDGE LAW GROUP LLP

By: /s/ Thomas W. Lathram

Thomas W. Lathram

Attorneys for Plaintiff  
Zoho Corporation Pvt. Ltd.  
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**JURY DEMAND**

Plaintiff Zoho Corporation Pvt. Ltd. hereby demands a jury trial on all issues triable by a jury.

Dated: March 3, 2020

SILICON EDGE LAW GROUP LLP

By: /s/ Thomas W. Lathram

Thomas W. Lathram

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